entity will continue to be 43.32 percent; and (4) the cash deposit rate for non-PRC exporters of subject merchandise from the PRC will be the rate applicable to the PRC supplier of that exporter. These requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 351.213.

Dated: December 28, 2001.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 02–246 Filed 1–3–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–337–804]

Certain Preserved Mushrooms From Chile: Preliminary Results of Antidumping Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping administrative review.

SUMMARY: In response to a timely request from the petitioner,[1] on January 31, 2001, the Department of Commerce published a notice of initiation of an administrative review of the antidumping duty order on certain preserved mushrooms from Chile with respect to Nature's Farm Products (Chile) S.A., Ravine Foods Inc., and Compañia Envasadora del Atlantico covering the period December 1, 1999, through November 30, 2000.

We preliminarily determine that sales have been made below normal value. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: January 4, 2002.

FOR FURTHER INFORMATION CONTACT: David J. Goldberger or Sophie E. Castro, Office 2, AD/CVD Enforcement Group I, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4136 or (202) 482–0588, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the U.S. Department of Commerce's (the Department's) regulations are to 19 CFR part 351 (2000).

Background

On October 22, 1998, the Department published in the **Federal Register** the final affirmative antidumping duty determination of sales at less than fair value (LTFV) on certain preserved mushrooms from Chile (*see Notice of Final Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from Chile,* 63 FR 56613, (*LTFV Final Determination*)). We published an antidumping duty order on December 2, 1998 (*see Notice of Antidumping Duty Order: Certain Preserved Mushrooms from Chile,* 63 FR 66529).

On January 31, 2001, the Department published a notice of initiation of an administrative review of the antidumping duty order on certain preserved mushrooms from Chile with respect to Nature's Farm Products (Chile) S.A. (NFC), Ravine Foods Inc (Ravine), and Compañia Envasadora del Atlantico (CEA) (*see Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 66 FR 8378). On February 8, 2001, the Department issued the antidumping questionnaire to: NFC via its U.S. parent, Nature Farm Products, Inc. (NFP/USA); Ravine, a Canadian company; and CEA, a Colombian company.

NFP/USA advised the Department on February 13, 2001, that NFC did not export or sell the subject merchandise to the United States, nor did NFP/USA import or sell the subject merchandise to the United States. However, NFP/USA advised the Department to send a copy of the questionnaire directly to NFC (*see* Memorandum to the File dated February 13, 2001, which summarizes information received from NFP/USA), which the Department had already sent on February 12, 2001. We did not receive a response from NFC, nor did we receive a response from Ravine.

We received a questionnaire response from CEA in April 2001. We issued supplemental questionnaires in May and August 2001. CEA responded to these questionnaires in June, July, August and September 2001. On October 4, 2001, CEA's counsel confirmed in a telephone conversation that the entry of the subject merchandise reported in CEA's questionnaire response had already been liquidated by the Customs Service (*see* Memorandum to the File from Sophie Castro dated October 9, 2001).

In November 2001, we requested information concerning CEA's reported sale transaction from NFC, NFP/USA, and CEA's customer, Horley Trading Co., Ltd. (Horley). We received responses from NFP/USA and Horley; we did not receive a response from NFC.

On July 19, 2001, due to the reasons set forth in the *Notice of Extension of Time Limit for the Preliminary Results of Antidumping Administrative Review: Certain Preserved Mushrooms from Chile,* 66 FR 37640 (July 19, 2001), we extended the due date for the preliminary results to November 15, 2001, in accordance with section 751(a)(3)(A) of the Act. On November 19, 2001, we again extended the due date of the preliminary results to December 31, 2001, in accordance with section 751(a)(3)(A) of the Act (*see Notice of Extension of Time Limit for the Preliminary Results of Antidumping Administrative Review: Certain Preserved Mushrooms from Chile,* 66 FR 57937 (November 19, 2001)).

Scope of the Order

The products covered by this order are certain preserved mushrooms, whether imported whole, sliced, diced, or as stems and pieces. The preserved mushrooms covered under this order are the species Agaricus bisporus and Agaricus bitorquis. ''Preserved mushrooms'' refer to mushrooms that have been prepared or preserved by cleaning, blanching, and sometimes slicing or cutting. These mushrooms are then packed and heated in containers including but not limited to cans or glass jars in a suitable liquid medium,

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[1] The petitioner is the Coalition for Fair Preserved Mushroom Trade which includes the American Mushroom Institute and the following domestic companies: L.K. Bowman, Inc., Nottingham, PA; Modern Mushrooms Farms, Inc., Toughkernamon, PA; Monterrey Mushrooms, Inc., Watsonville, CA; Mount Laurel Canning Corp., Temple, PA; Mushrooms Canning Company, Kennett Square, PA; Southwood Farms, Hockessin, DE; Sunny Dell Foods, Inc., Oxford, PA; United Canning Corp., North Lima, OH.

including but not limited to water, brine, butter or butter sauce. Preserved mushrooms may be imported whole, sliced, diced, or as stems and pieces. Included within the scope of this order are ''brined'' mushrooms, which are presalted and packed in a heavy salt solution to provisionally preserve them for further processing.

Excluded from the scope of this order are the following: (1) All other species of mushroom, including straw mushrooms; (2) all fresh and chilled mushrooms, including ''refrigerated'' or ''quick blanched mushrooms''; (3) dried mushrooms; (4) frozen mushrooms; and (5) ''marinated,'' ''acidified'' or ''pickled'' mushrooms, which are prepared or preserved by means of vinegar or acetic acid, but may contain oil or other additives.

The merchandise subject to this order is currently classifiable under subheadings 2003.10.0027, 2003.10.0031, 2003.10.0037, 2003.10.0043, 2003.10.0047, 2003.10.0053, and 0711.90.4000 of the *Harmonized Tariff Schedule of the United States* (HTSUS). Although the HTSUs subheadings are provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

Determination of Exporter/Respondent

According to the information developed in this review, CEA purchased provisionally preserved (*i.e.,* brined) mushrooms in bulk containers from NFC. CEA reported that it subsequently retorted and repacked the subject merchandise into commercial-size cans and sold and shipped them to its U.S. customer, Horley. These cans were packed with the Nature's Farm brand on the label and the statement ''Distributed by Nature's Farm Products, Inc.'' on the label. CEA reported its sale to Horley for purposes of this review and stated that, to the best of its knowledge, NFC did not have knowledge that the merchandise was destined for the United States at the time of NFC's sale to CEA.

We have determined, based on our analysis of the information provided by CEA, NFP/USA, and Horley, that the first party with knowledge of destination was NFC and therefore the relevant transaction in accordance with section 772(a) of the Act is NFC's sale to CEA for exportation to the United States. Although CEA claims that it is the first party in the chain of distribution who had knowledge that the ultimate destination of the sale was the United States, our determination that NFC is the exporter who had knowledge of destination is based on evidence that NFC was affiliated with NFP/USA, that NFP/USA and Horley are affiliated, and that NFP/USA and Horley were engaged in sales negotiations with CEA immediately prior to or at the same time as their affiliate NFC sold subject merchandise to CEA.

Horley and NFP/USA

Horley and NFP/USA both claim to be unaffiliated with each other. They claim that Horley merely has a licensing, rental, and commission agreement with NFP/USA, which enables Horley to use the NFP/USA brand on canned mushroom labels, and that NFP/USA's senior staff members are employed with Horley only in the role of ''technical consultants.''

Among the specific ''persons'' considered in reaching an affiliated decision are officers and directors of organizations, employer and employee, and ''any person who controls any other person or such persons.'' *See* section 771(33) of the Act. Moreover, ''a person shall be considered to control another person if the person is legally or operationally in a position to exercise restraint or direction over the other person.''

The *Statement of Administrative Action,* H. Doc. No. 103–316, Vol. 1 (1994) (SAA) at 838 states that ''[t]he traditional focus on control through stock ownership fails to address adequately modern business arrangements, which often find one firm operationally in a position to exercise restraint or direction over another even in the absence of an equity relationship. A company may be in a position to exercise restraint or direction, for example, through corporate or family groupings, franchises, or joint venture agreements, debt financing, or close supplier relationships in which the supplier or buyer becomes reliant upon the other.''

There are several factors on the record which lead us to believe that NFP/USA and its officers exercise control over Horley legally or operationally. NFP/USA claims that it ceased import operations immediately prior to Horley's commencement of business operations. Horley established an office at NFP/USA's facility, and the two entities continue to share the facility to this day. Furthermore, Horley commenced negotiations on the import of the subject merchandise from CEA even before it was legally incorporated, but only after NFP/USA, who was initially contacted by CEA, referred the business to Horley. In fact, NFP/USA's president is the only person on the record identified as negotiating the sale with CEA on Horley's behalf. Furthermore, NFP/USA's president is also the only person who has provided factual information on Horley's behalf in response to our questionnaires, although NFP/USA's vice president certified Horley's December 3, 2001, factual submission under 19 CFR 351.303(g)(1). In addition, Horley's accountant also has been employed as NFP/USA's accounting manager. Besides shared managers and shared facilities, Horley also shares something much more obvious with NFP/USA—NFP/USA's name. Horley has the rights to all of NFP/USA's brand names, according to the licensing agreement submitted to the Department. Therefore, although Horley does not market itself as NFP/USA, it markets its products as NFP/USA goods. Thus, for all intents and purposes, taken as a whole, we believe that the record demonstrates that NFP/USA and its officers have shepherded and significantly controlled Horley's transactions with CEA.

In *Ta Chen Stainless Steel Pipe,* 1999 Ct. Intl. Trade LEXIS 110 (October 28, 1999) (*Ta Chen*), the Department found two companies, Ta Chen and Sun, to be affiliated. In making this determination, the Department cited a number of factors, including (a) historical ties between the companies, (b) former Ta Chen employees working for Sun; and (c) Sun's distribution solely of Ta Chen products. *See id.* at 115–117. The Court of International Trade (CIT) affirmed the Department's affiliation determination, stating, ''[e]ven if each of the individual connections between Ta Chen and Sun, standing alone, may not be sufficient to establish control, Commerce's conclusion that the numerous connections between Ta Chen and Sun were indicative of control was reasonable. Commerce did not rely on any one factor in concluding that Ta Chen and Sun were affiliated parties, rather, it determined that the combination of factors was sufficient proof of affiliation.'' *See id.*

We find that the circumstances in this case are comparable to those contemplated in the SAA and similar to those in *Ta Chen.* The totality of factors demonstrate that NFP/USA and Horley are affiliated companies. The two companies share officers, business opportunities, office space, and product brand names. Such a relationship between these two companies indicates that NFP/USA controls Horley for purposes of this review, within the meaning of section 771(33)(G) of the Act.

NFP/USA and NFC

As discussed in both the *Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms From Chile,* 63 FR 41786 (August 5, 1998), and the *LTFV Final Determination,* NFP/USA and NFC are closely affiliated companies. For example, all of NFC's sales in the LTFV investigation were made through NFP/USA as constructed export price transactions. NFP/USA incurred the expense for certain NFC production activities (*see LTFV Final Determination,* 63 FR at 56614). Further, NFP/USA acknowledged that ''NFP/USA is the primary funding source of NFP's operations'' (*id.,* 63 FR at 56623). The record of this review shows no change in this status until February 2000. Accordingly, NFP/USA was clearly affiliated with NFC when NFC sold its brined mushrooms to CEA in January 2000. Furthermore, CEA indicated in its questionnaire responses that it only pursued business with NFC after it was confident that Horley would purchase canned mushrooms from CEA (see CEA's December 7, 2001, submission at page 3). Thus, Horley was in sales negotiations with CEA at the same time NFP/USA's affiliate NFC was negotiating to sell the subject merchandise to CEA. As discussed above, Horley and NFP/USA are affiliated companies. Accordingly, we believe that the weight of the evidence supports our finding that NFC had knowledge at the time of its sale to CEA, through its affiliation with NFP/USA, that the ultimate destination of its sale of brined mushrooms to CEA was the United States.

NFP/USA claims that it agreed to sever its affiliation with NFC in November 1999 (*see* NFP/USA's December 3, 2001, submission at page 5). However, NFP/USA provided no evidence on the record of such an agreement. Moreover, NFP/USA acknowledges that NFC and NFP/USA remained legally affiliated until the formal transfer of NFP/USA's stock in February 2000.

NFP/USA and NFC were legally affiliated at the time of NFC's sale of brined mushrooms to CEA through NFP/USA's equity in NFC, as well as through their strong historical ties. Given that the subject merchandise was produced by NFC, and that it ultimately arrived in the United States in Horley's, and thereby NFP/USA's, control under the Nature's Farm brand name, the record evidence leads us also to conclude that NFC had knowledge of the ultimate destination of the product when it was sold to CEA.

Use of Facts Otherwise Available

As stated above under ''Case History,'' the Department initiated an administrative review of three companies: Ravine, NFC, and CEA.

Section 776(a)(2) of the Act provides that ''if an interested party or any other person (A) withholds information that has been requested by the administering authority; (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782; (C) significantly impedes a proceeding under this title; or (D) provides such information but the information cannot be verified as provided in section 782(i), the administering authority shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title.'' Because Ravine and NFC have provided no information, we are assigning Ravine and NFC margins on the basis of the facts available, in accordance with section 776(a) of the Act. As we have determined that CEA's sale should be considered a sale by NFC, we have included this transaction in the rate assigned to NFC.

Ravine

As noted above, Ravine did not respond to the Department's questionnaire. Therefore, the Department was unable to issue further questionnaires and review Ravine's information pursuant to sections 782(d) and 782(e) of the Act. Because of its refusal to cooperate in this review, we determine that the application of a rate based on facts available is appropriate pursuant to section 776(a)(2) of the Act.

NFC

As discussed above, NFC did not respond either to the Department's questionnaire, nor to the Department's November 2001 request for information. Thus we determine that the application of facts available is appropriate in the case of NFC.

Application of Adverse Facts Available

Because Ravine and NFC have refused to participate in this administrative review, we preliminarily determine that an adverse inference is warranted in selecting facts otherwise available, in accordance with section 776(b) of the Act (*see, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Persulfates from The People's Republic of China*, 62 FR 27222, 27224 (May 19, 1997); and *Certain Grain-Oriented Electrical Steel From Italy: Final Results of Antidumping Duty Administrative Review*, 62 FR 2655 (January 17, 1997) (applying an adverse inference, as explained in detailed in *Preliminary Results of Antidumping Duty Administrative Review: Certain Grain-Oriented Electrical Steel From Italy*, 61 FR 36551, 36552, (July 11, 1996))).

Section 776(b) of the Act provides that, if the Department finds that an interested party ''has failed to cooperate by not acting to the best of its ability to comply with a request for information,'' the Department may use information that is adverse to the interests of the party as facts otherwise available. Adverse inferences are appropriate ''to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.'' *See SAA* at 870. Furthermore, ''an affirmative finding of bad faith on the part of the respondent is not required before the Department may make an adverse inference.'' *See Antidumping Duties; Countervailing Duties: Final Rule*, 62 FR 27296, 27340 (May 19, 1997).

Section 776(b) of the Act authorizes the Department to use as adverse facts available information derived from the petition, the final determination from the LTFV investigation, a previous administrative review, or any other information placed on the record. Under section 782(c) of the Act, a respondent has a responsibility not only to notify the Department if it is unable to provide requested information, but also to provide a ''full explanation and suggested alternative forms.''

Ravine and NFC failed to respond to our request for information in any manner, thereby failing to comply with this provision of the statute and making it impossible for the Department to conduct an administrative review of their sales or entries. Therefore, we have determined that Ravine and NFC failed to cooperate to the best of their abilities and we have made an adverse inference in applying the facts available.

In this proceeding, the only rate that has been in effect has been the rate of 148.51% calculated for NFC and All Others in the *LTFV Final Determination*. Information from prior segments of the proceeding constitutes secondary information and section 776(c) of the Act provides that the Department shall, to the extent practicable, corroborate that secondary information from independent sources reasonably at its disposal. The SAA provides that ''corroborate'' means that the Department will satisfy itself that the secondary information to be used has probative value (*see* SAA at 870).

To corroborate secondary information, the Department will, to the extent

practicable, examine the reliability and relevance of the information to be used. *See Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Review: Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof from Japan,* 61 FR 57392 (November 6, 1996) (*TRBs*). However, unlike other types of information, such as input costs or selling expenses, there are no independent sources for calculated dumping margins. Thus, in an administrative review, if the Department chooses as adverse facts available a calculated dumping margin from a prior segment of the proceeding, it is not necessary to question the reliability of the margin for that time period. With respect to the relevance aspect of corroboration, however, the Department ''will consider information reasonably at its disposal as to whether there are circumstances that would render a margin inappropriate. Where circumstances indicate that the selected margin is not appropriate as adverse facts available, the Department will disregard the margin and determine an appropriate margin'' (*id.; see* also *TRBs* and *Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812, 6814 (Feb. 22, 1996) (where the Department disregarded the highest margin as adverse facts available because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin)).

As noted above, the highest calculated margin (and the only calculated margin) in the history of this proceeding is 148.51 percent. In the instant review, there are no circumstances indicating that this margin is inappropriate as facts available. Moreover, this rate is currently applicable to all subject merchandise. Assigning a lower rate, even if one were available, would effectively reward these companies for their failure to cooperate. Therefore, we find that the 148.51 percent rate is corroborated to the greatest extent practicable in accordance with section 776(c) of the Act.

Preliminary Results of the Review

As a result of this review, we preliminarily determine that the dumping margin for the POR is as follows:

Manufacturer/exporter	Margin (percent)
Nature's Farm Products (Chile) S.A. (including merchandise shipped by the Colombian firm Compañia Envasadora del Atlantico)	148.51
Ravine Foods	148.51

If requested, a hearing will be held 44 days after the date of publication of this notice, or the first work day thereafter.

Issues raised in the hearing will be limited to those raised in the respective case briefs and rebuttal briefs. Case briefs from interested parties and rebuttal briefs, limited to the issues raised in the respective case briefs, may be submitted not later than 30 days and 37 days, respectively, from the date of publication of these preliminary results. *See* 19 CFR 351.309(c) and (d). Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument. Parties are also encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited.

The Department will issue the final results of this administrative review, including the results of its analysis of issues raised in any written briefs, not later than 120 days after the date of publication of this notice.

Interested parties who wish to request a hearing or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, Room B–099, within 30 days of the date of publication of this notice. Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. *See* 19 CFR 351.310(c).

Assessment Rates

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appropriate appraisement instructions directly to the Customs Service upon completion of this review. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties. We will instruct the Customs Service to assess antidumping duties on all appropriate entries covered by this review on an importer-specific basis. We are also instructing Customs to apply a specific rate to all entries manufactured by NFC and sold to CEA.

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed company will be that established in the final results of this review; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 148.51 percent, the ''All Others'' rate made effective by the LTFV investigation. These requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are published in accordance with section 751(a)(1) of the Act and 19 CFR 351.221.

Dated: December 28, 2001.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 02–245 Filed 1–3–02; 8:45 am]

BILLING CODE 3510–DS–P